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SPEAKER'S ROOM
U.S. HOUSE OF RE

The Honorable Dennis J. Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

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Dear Mr. Speaker:

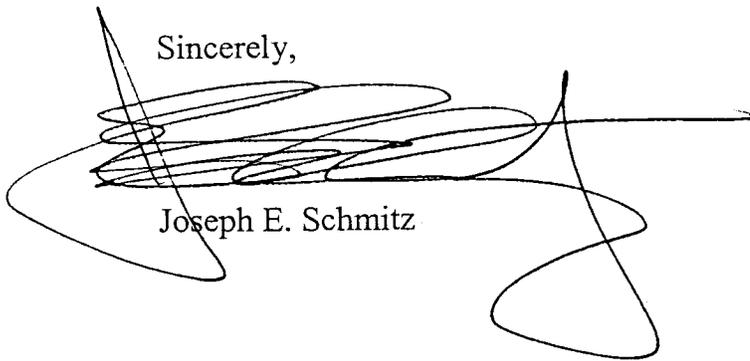
The enclosed report provides the results of our audit that was conducted in response to Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern," October 5, 1999, which requires that no later than March 30 of each year through 2007 a report be sent to Congress on an interagency audit of policies and procedures pertaining to the "export of technologies and technical information to countries of concern."

The Interagency Offices of the Inspectors General Working Group is unable to produce a report in time to meet the congressional deadline of March 30, 2003, because the Inspector General of the Department of Commerce could not meet the deadline with their agency-specific report. As a result, the agency-specific reports are being provided separately by each of the six Offices of the Inspectors General to meet that deadline. The interagency report will be forthcoming in mid-April 2003.

DoD had adequate procedures for managing space launch-related export activities. However, DoD had not established adequate procedures to verify that Commerce and State performed DoD-required enforcement actions and had not assessed the adequacy of the enforcement actions performed. DoD policies and procedures did not require the Defense Technology Security Administration to verify the inclusion and the accuracy of conditions in approved export licenses, to establish criteria for determining when to require an enforcement action, or to follow up on the results and adequacy of Commerce and State enforcement actions. Specifically, for the 4,976 export licenses reviewed, 347 misstated or omitted DoD conditions for approval.

Please contact me or Mr. John R. Crane, Director, Office of Communications and Congressional Liaison, at (703) 604-8324, if you have any questions regarding this matter.

Sincerely,



Joseph E. Schmitz

Enclosure:
As stated

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March 28, 2003



Export Controls

DoD Involvement in Export Enforcement Activities (D-2003-070)

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Acronyms

DTSA	Defense Technology Security Administration
DTSA-SD	DTSA Space Directorate
PLC	Pre-License Check
PSV	Post-Shipment Verification
TPS	Technology Protection System
USG	U.S. Government

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

March 28, 2003

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(TECHNOLOGY SECURITY POLICY AND
COUNTER-PROLIFERATION)

SUBJECT: Report on DoD Involvement in Export Enforcement Activities
(Report No. D-2003-070)

We are providing this report for review and comment. We conducted the audit in response to Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern."

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) did not comment on a draft of this report. As a result of discussions with personnel in the Office of the Deputy Under Secretary, we revised finding A after the release of the draft report. We request the Deputy Under Secretary provide comments on this final report by May 27, 2003.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to Audls@dodig.osd.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions should be directed to Ms. Evelyn R. Klemstine at (703) 604-9172 (DSN 664-9172) or Ms. Nancee K. Needham at (703) 604-9633 (DSN 664-9633). See Appendix G for the report distribution. The team members are listed inside the back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

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Office of the Inspector General of the Department of Defense

Report No. D-2003-070
(Project No. D2002LG-0152)

March 28, 2003

DoD Involvement in Export Enforcement Activities

Executive Summary

Who Should Read This Report and Why? Personnel involved with developing conditions and positions on export license applications, enforcing license conditions, or any other export-related function should read this report. This report discusses weaknesses in enforcement measures over the export of militarily sensitive technology.

Background. Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern," October 5, 1999, requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director, Central Intelligence Agency and the Director, Federal Bureau of Investigation, conduct annual reviews of the transfer of militarily sensitive technologies to countries and entities of concern.

The United States controls the export of certain goods and technologies for national security, foreign policy, or nonproliferation reasons. U.S. businesses apply for export licenses through the Department of Commerce (Commerce) for dual-use items and the Department of State (State) for munitions items. Commerce and State may approve a license application or they may refer it to DoD for a technical review. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) and the Defense Technology Security Administration are the principal DoD Components for providing DoD conditions on export license applications to Commerce and State. When the Defense Technology Security Administration receives a license application, it either prepares a position or refers the license application to the Military Departments or other DoD Components to perform a technical analysis. The Defense Technology Security Administration prepares a DoD position based on the technical analysis and returns the application with the DoD position to Commerce or State, as applicable.

Results. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) needed to improve management controls and establish procedures to verify that Commerce- and State-approved export licenses accurately reflected DoD conditions required for the approval of the license and establish criteria to evaluate whether requiring enforcement actions as a condition was adequate to protect national security objectives. In addition, the Deputy Under Secretary of Defense needed to establish procedures for obtaining, reviewing, and assessing the adequacy of Commerce and State enforcement actions required as a DoD condition of approval. Specifically, of the 4,976 export licenses reviewed, for FY 2000 through FY 2002, 347 Commerce- or State-approved licenses misstated or omitted DoD conditions for approval. In addition, criteria was lacking to determine whether requiring enforcement actions on 565 export license applications was adequate to protect national security objectives. Further, we identified that 84 of 574 enforcement actions required by DoD were performed. As a result, DoD cannot ensure that critical U.S. military technological advantages are

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preserved, detrimental transfers are adequately controlled and limited, and proliferation of weapons of mass destruction and their means of delivery is prevented. (See finding A for the detailed recommendations.)

The Defense Technology Security Administration had established and executed an effective monitoring program for activities related to space launches. The Defense Technology Security Administration Space Directorate was adequately resourced with technology safeguard personnel to accomplish the monitoring mission. Policies and procedures for the execution of the monitoring program were in place and being followed. A comprehensive training program for the monitors had been created and implemented. Monitoring efforts were closely documented and maintained. As a result, DoD had reasonable assurance that space launch-related technology would not be inadvertently released to or deliberately obtained by potential adversaries (finding B).

Management Comments. We provided a draft of this report on March 7, 2003. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) did not provide comments on the report. Therefore, we request that the Deputy Under Secretary provide comments on the final report by May 27, 2003.

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Background

Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern," October 5, 1999, required this audit. Public Law 106-65 states:

Not later than March 30 of each year beginning in the year 2000 and ending in the year 2007, the President shall transmit to Congress a report on transfers to countries and entities of concern during the preceding calendar year of the most significant categories of United States technologies and technical information with potential military applications. The report shall include an audit by the Inspectors General of the Departments of Defense, State, Commerce, and Energy, in consultation with the Director, Central Intelligence and the Director, Federal Bureau of Investigation, of the policies and procedures of the United States Government with respect to the export of technologies and technical information to countries and entities of concern.

To comply with the first-year requirement of the Act, the Offices of the Inspectors General conducted an interagency review of Federal agency compliance with the deemed export¹ licensing requirements contained in the Export Administration Regulations, title 15 of the Code of Federal Regulations, part 730, April 26, 2002, and the International Traffic in Arms Regulations, title 22 of the Code of Federal Regulations, section 126.1, April 1, 2002. To comply with the second-year requirement of the Act, the Offices of the Inspectors General conducted an interagency review of the Federal agency reviews and revisions of the government-published Commerce Control List and the U.S. Munitions List. The Commerce Control List and U.S. Munitions List identify the goods and technologies that are subject to export controls. Exporters use the Commerce Control List, which is managed by the Department of Commerce (Commerce) Bureau of Industry and Security, to determine what dual-use² items are subject to control. For munitions, exporters refer to the U.S. Munitions List, which is managed by Department of State (State) Office of Defense Trade Controls. To comply with the third-year requirement of the Act, the Offices of the Inspectors General conducted an interagency review of Federal automation programs supporting the export licensing and review process. To comply with the fourth-year requirement of the Act, the Offices of the Inspectors General conducted an interagency review of the enforcement programs of export licenses. Portions of the background information in this report are from Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury Report No. D-2002-074, "Interagency Review of Federal Automated Export Licensing Systems," March 29, 2002, and Inspectors General of the Departments of Commerce, Defense, Energy, and State Report No. D-2001-092, "Interagency Review of the Commerce Control List and the U.S. Munitions List," March 23, 2001.

¹ A deemed export is any release to a foreign national of software or technology that is subject to the Export Administration Regulations.

² Dual-use items are goods or technologies that have both civilian and military application.

Federal Export Licensing Process. The United States controls the export of certain goods and technologies for national security, foreign policy, or nonproliferation reasons. To export militarily sensitive technologies, U.S. businesses must apply for export licenses through Commerce for dual-use items and State for munitions items. Commerce and State may provide a U.S. Government (USG) position on an application or they may refer a license application to DoD for a technical review.

Draft DoD Directive 5105.kk, “Defense Technology Security Administration,” August 2, 2002, places the Defense Technology Security Administration (DTSA) under the authority, direction, and control of the Under Secretary of Defense for Policy and assigns the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) as the director of DTSA. The DTSA mission is to administer—consistent with U.S. and DoD policy, national security objectives, and Federal laws and regulations—the development and implementation of DoD technology security practices on international transfers of Defense-related goods, services, and technologies. DTSA is to ensure that critical U.S. military technological advantages are preserved, transfers that could prove detrimental to U.S. security interests are controlled and limited, proliferation of weapons of mass destruction and their means of delivery are prevented, and legitimate defense cooperation with foreign allies and friends is supported.

Under Secretary of Defense for Policy. The Under Secretary of Defense for Policy is ultimately responsible for the DoD export license review process. DTSA is the principal DoD Component for providing DoD conditions to Commerce and State on export license applications. Before August 31, 2001, when the Deputy Secretary of Defense reestablished DTSA in the Office of the Under Secretary of Defense for Policy, the Defense Threat Reduction Agency, Technology Security Directorate was the DoD Component that provided DoD conditions. For the purpose of this report, DTSA is used for the current and former names.

Defense Technology Security Administration. DTSA is responsible for advising the Under Secretary of Defense for Policy on issues related to transfers of sensitive technologies and exports of dual-use and munitions items. In addition, DTSA assists the Under Secretary of Defense for Policy in developing export control policies and procedures that are necessary to protect the national security interests of the United States. Also, DTSA is responsible for preparing the DoD position on export license applications referred to DoD by Commerce or State. After receiving export license applications from Commerce or State, DTSA may either prepare the DoD position or refer the license application to the Military Departments or other DoD Components to perform a technical analysis of the application. DTSA consolidates the technical analyses and returns the export license application with the DoD position to Commerce or State, as applicable. DoD may return an export license application with a recommendation for approval, approval with conditions,³ or denial, or DoD may return the application without action. DoD conditions placed on export licenses help ensure that militarily sensitive technologies are not inadvertently released or

³ DoD conditions do not automatically require an enforcement action; conditions may be technology-related or user-related.

inappropriately used. Export license conditions require the exporter and end-user to abide by certain restrictions.

Export Enforcement. Export enforcement protects U.S. national security, foreign policy, and economic interests by educating exporters, interdicting illegal exports, and prosecuting violators without impeding legitimate trade activities. Export enforcement is executed through enforcement actions such as pre-license checks (PLCs) and post-shipment verifications (PSVs). A PLC is used to determine whether the overseas parties or representatives of U.S. exporters are suitable for receiving sensitive U.S. technologies. The PLC requires confirmation that a party listed on the license application is indeed involved in the transaction, requires verification that the proposed disposition of the items is consistent with normal business practices, and helps to ensure that the foreign party understands its responsibilities under U.S. law. A PSV is used to determine whether the overseas parties or representatives of U.S. exporters are using the goods in accordance with the conditions of the export license and confirms whether the sensitive U.S. technologies exported were actually received by the party named in the export license. Commerce is responsible for enforcing license conditions on exported dual-use items. State is responsible for enforcing license conditions on exported munitions items.

Commerce. The Commerce Bureau of Industry and Security controls the export of dual-use items using the authority provided in the Export Administration Act of 1979, as amended (section 2401, title 50, United States Code). The Export Administration Regulations implements the Export Administration Act and Executive Order 12981 requirements for executing the export licensing process for dual-use items. The Bureau of Industry and Security is responsible for enforcing dual-use export license conditions. Specifically, the Bureau of Industry and Security detects, investigates, and deters violations of the Export Administration Act and the Export Administration Regulations; monitors export transactions; and initiates enforcement actions. Commerce provided data showing that it conducted 945 enforcement actions during FY 2001 and 757 during FY 2002.

State. The State Bureau of Political-Military Affairs, Office of Defense Trade Controls, controls the export of munitions items by approving or denying export licenses and ensuring compliance with the Arms Export Control Act (section 2751, title 22, United States Code) and other applicable laws and regulations. In September 1990, State initiated a systemic process, known as the "Blue Lantern" program, aimed at conducting enforcement actions on U.S. Defense exports. At the request of the Office of Defense Trade Controls, U.S. Embassy personnel abroad execute enforcement actions. State provided data showing that it conducted 218 enforcement actions during FY 2000; 410 enforcement actions during FY 2001; and 428 enforcement actions during FY 2002.

Defense. DoD is not responsible for enforcing license conditions on dual-use and munitions exports and is only a collaborator in the Commerce and State enforcement programs. However, DoD is responsible for enforcing export license conditions on technologies related to space launches and the Defense Security

Cooperation Agency is responsible for monitoring government-to-government arms transfers.

DTSA Space Directorate. DTSA Space Directorate (DTSA-SD) is responsible for managing space launch-related export activities, to include approving security plans for U.S. companies in conjunction with exports and monitoring technical meetings and launch-site operations (see finding B).

Defense Security Cooperation Agency. In 1996, the Arms Export Control Act was amended to require the establishment of a comprehensive end-use program for arms sales and transfers made under the authorities contained in the Arms Export Control Act and the Foreign Assistance Act of 1961. Specifically, the Arms Export Control Act amendment requires controls for government-to-government programs in accordance with standards developed under the Arms Export Control Act for identifying high-risk exports. The Foreign Assistance Act requires DoD to supervise end-item use of Defense articles and services provided under Foreign Assistance Act grant programs. Therefore, DoD has principal responsibility for monitoring government-to-government arms transfers. To monitor government-to-government arms transfers, the Defense Security Cooperation Agency established and operates the Golden Sentry program. Although the Arms Export Control Act required such a program to be established in 1996, the Golden Sentry program did not begin until April 2002. As of January 2003, the Defense Security Cooperation Agency was developing the objectives of the Golden Sentry program and formulating end-use monitoring guidelines. Specifically, the Defense Security Cooperation Agency was determining what weapon system platforms and countries to include in its end-use inspections and what expertise would be required in end-use inspection teams.

In addition, DoD has various other programs that support Commerce and State export enforcement programs (see Appendix C).

Objectives

The overall objective was to evaluate the adequacy and effectiveness of export enforcement activities by DoD concerning the transfer of militarily sensitive technologies to countries and entities of concern, including DoD efforts to prevent the illegal export of dual-use and munitions items. In addition, we reviewed the DTSA process and procedures for monitoring foreign space launch activities and for reporting potential violations of license conditions and technology transfer control plans. We also reviewed the management control program as it applied to the overall audit objective. See Appendix A for a discussion of scope and methodology and the review of the management control program. See Appendix B for prior coverage related to the objectives.

A. DoD Participation in Export Enforcement Programs

DoD did not establish procedures to verify that export licenses approved by Commerce and State accurately reflected DoD conditions for approval of the license applications. Specifically, of the 4,976 export license applications reviewed, 347 Commerce- or State-approved licenses misstated or omitted DoD conditions. In addition, DoD lacked criteria to evaluate whether requiring enforcement actions as a condition for approval of 565 export license applications was adequate to protect national security objectives. Also, DoD had not established followup procedures to verify that Commerce and State performed the enforcement actions and had not assessed the adequacy of the enforcement actions. We identified that 84 of 574 enforcement actions that DoD required were performed. Those problems occurred because DoD policies and procedures did not require DTSA to verify the accuracy of conditions in approved export licenses, to establish criteria for determining when to require an enforcement action, or to follow up on the results and adequacy of Commerce and State enforcement actions. As a result, DoD cannot ensure that critical U.S. military technological advantages are preserved, detrimental transfers are adequately controlled and limited, and proliferation of weapons of mass destruction and their means of delivery is prevented.

Export License Conditions

DoD did not establish procedures to verify that export licenses approved by Commerce and State accurately reflected DoD conditions for approval of the license applications. We reviewed 4,976 of the 22,083⁴ export license applications in the DoD Technology Protection System (TPS)⁵ to determine whether Commerce or State had accurately incorporated DoD conditions for approval of the applications into the approved export licenses. Of the 4,976 export license applications reviewed, 347 (7.0 percent⁶) of the approved licenses misstated or omitted DoD conditions. In addition, out of the 4,976 export license applications reviewed, 84 applications were for exports to countries of concern.⁷ For those 84 applications, 7 (8.3 percent⁶) did not accurately reflect the DoD position in the approved export license. Specifically, those seven export licenses either misstated or omitted DoD conditions. For the cases in which the DoD conditions for approval of a license application did not match the USG positions

⁴ Our universe only included export license applications containing DoD conditions. See Appendix D for a discussion of the sample selection process.

⁵ See Appendix E for details on our review of export license applications in TPS. TPS is an automated system used within DoD to track and maintain records on license applications.

⁶ Judgment sample percentage does not generalize to universe.

⁷ We restricted our review to 18 countries, including 5 countries of concern: China, Iran, Iraq, Syria, and Afghanistan. See Appendix D for details.

in the approved export license, it is unclear as to whether the conditions were intentionally omitted or simply a result of human error. Also, out of the 22,083 export license applications, DoD required enforcement actions as a condition for approval of 565 export license applications. Draft DoD Directive 5105.kk states that DTSA is responsible for ensuring that critical technological advantages are preserved and transfers that could prove detrimental to U.S. security interests are controlled and limited. Without ensuring that the approved licenses accurately reflect the DoD position, or obtaining the rationale for omission of DoD conditions, technological advantages may be compromised and inadvertently released because conditions included or excluded in the approved export license do not restrict the export use or technical capabilities as intended by DoD.

Dual-Use License Conditions. DoD did not establish procedures to verify that export licenses approved by Commerce accurately reflected DoD conditions for the approval of the license. The TPS database contained 11,830 dual-use export license applications for FYs 2000 through 2002 that were approved with conditions. Of the 11,830 applications, we selected 5,206 for review and obtained information from the Commerce Export Control Automated Support System for 292 applications. For those 292 dual-use licenses, 9 (3.1 percent⁶) either misstated or omitted conditions required by DoD for approval. See Appendix E for details on the comparison. For dual-use export applications, TPS shows DoD conditions required for the approval of the application but not USG positions included in the approved license. DTSA stated there was no need to enter USG positions into TPS because DTSA had access to the Commerce Export Control Automated Support System, which allowed DTSA to review USG positions.

Of the 292 licenses reviewed, 63 were for exports to countries of concern. For those 63 applications for exports to countries of concern, 2 (3.2 percent⁶) of the approved licenses did not accurately reflect the DoD position. Specifically, the official USG position either misstated or omitted DoD conditions. In one of the license cases, DoD initially recommended denial of the export license application due to a risk of diversion to military programs. Ultimately, the license application was escalated through established arbitration procedures and eventually approved with a DoD condition that stated "No Military End Users." However, Commerce omitted that condition in the export license.

In another license case, for a non-country of concern, DoD required an enforcement action as a condition for approval of the export license; however, Commerce did not include the DoD-required enforcement action. Although enforcement actions are not explicitly stated on export licenses, Commerce does record the requirement of an enforcement action in the Commerce Export Control Automated Support System and adds a condition to the export license that requires the exporter to send documentation to Commerce that shows the goods have been shipped. Commerce initiates the enforcement action when it receives that documentation.

DTSA licensing officials acknowledged that Commerce did not always accurately include DoD conditions in approved export licenses. Further, DTSA licensing officials acknowledged that Commerce did not always inform DTSA when Commerce did not incorporate the DoD conditions. In FY 2002, DTSA implemented an informal measure to assess whether Commerce accurately

incorporated DoD conditions into approved export licenses. Specifically, DTSA sampled approximately 20 percent of the export license applications that DTSA returned to Commerce. DTSA compared the conditions in each approved export license with DoD conditions required for the approval of the license. Although DTSA found discrepancies, it did not develop any formalized procedures for licensing officers to review approved export licenses.

Munitions License Conditions. DoD did not establish procedures to verify that State-approved export licenses accurately reflected DoD conditions required for the approval of the license. The TPS database contained 10,253 munitions export license applications for FYs 2000 through 2002 that were approved with conditions. Of the 10,253 applications, we selected 4,684 applications for review. Of the 4,684 munitions license cases reviewed, 338 (7.2 percent⁶) either misstated or omitted conditions required by DoD for approval. For munitions export license cases, TPS includes both DoD conditions and an optical character reader scanned version of the State-approved export license. To determine whether the 338 discrepancies were actual errors in the approved export licenses, we requested that State provide official hard copies of the approved export license for 138 of the applications. State could not fulfill our request for hard copies of the 138 licenses in time for us to consider them in our review. Therefore, we were unable to determine whether the 338 discrepancies were actual errors in the approved export licenses. See Appendix E for details on the comparison.

Also, out of the 4,684 license applications reviewed, 21 were for exports to countries of concern. For those 21 applications, the USG position in 5 (23.8 percent⁶) of the approved licenses did not accurately reflect the DoD position. Specifically, the USG position either misstated or omitted DoD conditions.

Although we were unable to determine which discrepancies were actual errors in the approved export licenses and, therefore, could not assess the impact of the discrepancies we identified, some were serious errors. For example, one license involved exporting components of an unmanned aerial vehicle to Singapore. The DoD position was approval with the condition that “[d]atalink transmission rates must be less than 10 mbits/second.” However, the TPS version of the approved license stated, “Datalink transmission rates must be less than 100 mbits/second.” That error allows a 1000 percent increase in the data transmission rate capability. Another export license case involved exporting C-130 aircraft components to Italy. The DoD position was approval with the condition that the contractor “must not: Collect signals, or interpret, analyze, validate or modify any emitter data, regardless of source; b. Offer training beyond operator and maintenance training in an unclassified signals environment; c. Offer or discuss automatic detection and identification of complex signals such as spread spectrum.” However, the TPS version of the approved license stated that “the [contractor]: Collect signals, or interpret, analyze, validate or modify any emitter data, regardless of source; b. Offer training beyond operator and maintenance training in an unclassified signals environment; c. Offer or discuss automatic detection and identification of complex signals such as spread spectrum.” The omission of “must not” from the approved export license not only reverses the DoD condition but requires the very activities DoD intended to restrict. Had DTSA developed procedures for its munitions licensing officers to review the approved licenses for

their respective cases, DTSA may have been able to identify and correct that discrepancy.

Enforcement Actions Required

DoD lacked criteria to evaluate whether requiring enforcement actions as a condition for approval of 565 of 22,083 export license applications was adequate to protect national security objectives. Also, out of the 22,083 export license applications reviewed, 3,070 applications were for exports to countries of concern. The DoD position on 261 (8.5 percent⁶) of those 3,070 applications required a PLC, a PSV, or both.

Dual-Use Enforcement Actions. The TPS database contained 11,830 dual-use export license applications for FYs 2000 through 2002 that were approved with conditions. Of the 11,830 dual-use export license applications, DoD required the performance of a PLC, a PSV, or both as a condition for approval of 556 (4.7 percent). Out of the 11,830 export license applications reviewed, 3,023 were related to exports to countries of concern. DoD required PLCs, PSVs, or both as a condition for approval of 261 of the 3,023 applications. Table 1 shows the dual-use license applications requiring enforcement actions by DoD. See Appendix F for further details, including a breakdown of applications by country.

<u>Country</u>	<u>Applications</u>	<u>Applications Requiring Action</u>	<u>Percent of Applications Requiring Action</u>
Non-countries of concern	8,807	295	3.3
Countries of concern	3,023	261	8.6
Total	11,830	556	4.7

Munitions Enforcement Actions. The TPS database contained 10,253 munitions export license applications for FYs 2000 through 2002 that were approved with conditions. DoD required the performance of a PLC or a PSV as a condition for approval of 9 (0.1 percent) of the 10,253 munitions export license applications. Although 47 of the 10,253 export license applications were related to exports to countries of concern, DoD had not required any enforcement actions as a condition for approval of those applications. Of the other 10,206 applications, DoD had included an enforcement action as a condition for approval of only 9 applications. Table 2 shows the munitions license applications requiring enforcement actions by DoD. See Appendix F for further details, including a breakdown of applications by country.

<u>Country</u>	<u>Applications</u>	<u>Applications Requiring Action</u>	<u>Percent of Applications Requiring Action</u>
Non-countries of concern	10,206	9	0.1
Countries of concern	47	0	0.0
Total	10,253	9	0.1

Enforcement Actions Performed

DoD could not ensure that Commerce and State performed DoD-required enforcement actions. Specifically, DoD did not have policies or procedures in place to determine whether Commerce and State performed any of the enforcement actions DoD required as a condition for approval of the 565 export license applications (556 for dual-use and 9 for munitions) for FYs 2000 through 2002. The 565 export license applications included 574 DoD-required enforcement actions as a condition for approval. (For 9 of the 556 dual-use applications, DoD required both a PLC and PSV as a condition for approval.) Out of the 574 enforcement actions that DoD required, we verified that Commerce and State performed 84; we were unable to verify 490 actions. To determine whether a DoD-required enforcement action was performed by Commerce or State, we compared Commerce and State summary reports of enforcement actions to the export license cases in TPS for which DoD had required an enforcement action. See Appendix F for further details, including a breakdown of applications by country.

DoD did not have a process in place to ensure it received official results of completed enforcement actions. Through an Office of the Secretary of Defense automated system (Cable Handling and Information Retrieval System), DTSA has the ability to review cable messages from U.S. Embassies, which could provide the results of enforcement actions. However, DTSA officials stated that success in querying the Cable Handling and Information Retrieval System depended on whether specific addresses were included in the cable message. DTSA would also have to be informed that the enforcement action had been done. In addition, the cable messages are fieldwork results and not the official results of enforcement actions. The Commerce Bureau of Industry and Security and the State Office of Defense Trade Controls issue the official results of enforcement actions. DTSA should receive the official results from those offices rather than rely on the cable messages.

Dual-Use Enforcement Actions. DoD could not ensure that Commerce performed DoD-required enforcement actions. Specifically, DoD did not have policies or procedures in place to determine whether Commerce performed any of

the 565 enforcement actions for dual-use exports DoD had required as a condition for approval of a license application processed in FYs 2000 through 2002. Although DoD did not have measures in place to ensure that Commerce performed DoD-required enforcement actions, we verified that Commerce performed 81 of the 565 DoD-required enforcement actions on dual-use licenses. Table 3 shows the number of DoD-required enforcement actions and the verified number of actions that Commerce performed.

**Table 3. DoD-Required Enforcement Actions
Performed by Commerce on Dual-Use Exports Licenses
(FYs 2000 through 2002)**

Country	Enforcement Actions Required	Enforcement Actions Performed	Percent of Enforcement Actions Performed
Non-countries of concern	297	70	23.6
Countries of concern	268	11	4.1
Total	565	81	14.3

Munitions Enforcement Actions. DoD could not ensure that State performed DoD-required enforcement actions. Specifically, DoD did not have policies or procedures in place to determine whether State performed any of the nine enforcement actions DoD had required as a condition for approval of a license application processed in FYs 2000 through 2002. Although DoD did not have measures in place to ensure that State performed DoD-required enforcement actions, we verified that State performed three of the DoD-required enforcement actions on munitions licenses. Table 4 shows the number of DoD-required enforcement actions and the verified number of actions that State performed.

**Table 4. DoD-Required Enforcement Actions
Performed by State on Munitions Exports Licenses
(FYs 2000 through 2002)**

Country	Enforcement Actions Required	Enforcement Actions Performed	Percent of Enforcement Actions Performed
Non-countries of concern	9	3	33.3
Countries of concern	0	0	0
Total	9	3	33.3

Commerce and State did not routinely inform DoD of the results of their enforcement actions. The performance of the enforcement actions is critical to protecting controlled items and in preventing illegal technology transfer. DoD relies on PLCs to check applications before the issuance of an export license and PSVs to confirm receipt of shipments by the stated end-user and to establish proof of proper end-use of the product or technology. DoD did not know how many of the enforcement actions performed by Commerce or State related directly to DoD conditions and, therefore, could not determine whether the number of actions performed was sufficient to prevent illegal technology transfer or ensure the item or technology was used as approved. In addition, because DoD was not informed of the results of enforcement actions, DoD was unable to determine whether its conditions were enforced by Commerce and State.

Policies and Procedures

DoD policies and procedures did not require DTSA to verify the accuracy of conditions in approved export licenses, to establish criteria for determining when to request an enforcement action, or to follow up on the results and adequacy of Commerce and State enforcement actions.

Verifying DoD Conditions. DoD did not establish procedures to verify that export licenses approved by Commerce and State accurately reflected DoD conditions for the approval of the application. Specifically, DTSA had not developed any formal procedures for its licensing officers to review approved export licenses to ensure that Commerce and State accurately incorporated DoD conditions into the approved export license. DTSA officials stated that it is the responsibility of Commerce and State to accurately incorporate DoD conditions into the approved licenses. In addition, DoD assumes adequate enforcement programs are in place when it provides the DoD position on an export license application.

General Accounting Office Report No. GAO-02-972, "Export Controls: Department of Commerce Controls over Transfers of Technology to Foreign Nationals Need Improvement," September 6, 2002, identified weaknesses in the Commerce enforcement program and discusses how DoD relies on the effectiveness of the Commerce enforcement program for approved export licenses. Specifically, the report states:

These [Commerce] officials stated that the conditions are crucial to DoD's willingness to agree to many deemed export license applications. Without these conditions, DoD would recommend that Commerce reject many deemed export license applications. Commerce officials also asserted that some conditions are not readily enforceable. They maintained that some involve highly technical matters that do not fall within the training provided to Commerce enforcement personnel. For example, Commerce officials stated that enforcement staff would be unable to determine whether the feature size of a semiconductor is smaller than the micron limit specified in one license condition. Similarly, Commerce officials asserted that enforcement personnel would be unable to verify compliance with conditions that proscribe

intangible transfers of technology, such as conversations between foreign nationals and their coworkers.

Although the General Accounting Office report addresses deemed exports, we believe the same premise holds true for tangible exports: the effectiveness of enforcement programs must be considered when DoD determines its position on export license applications. For example, before DoD provides a DoD position that includes the performance of a PSV as a condition for approval, DoD should take into account the likelihood of the PSV being performed.

Requiring Enforcement Actions. DoD did not establish criteria for determining when to require enforcement actions as a condition for approval of an export license application. Because there was no established guidance for requiring enforcement actions, DoD could not assess whether it required adequate enforcement actions to protect national security objectives. DoD should establish policies and procedures for requiring enforcement actions and establish an agreed-upon methodology for the selection of license cases to require enforcement action for. Those policies and procedures should be disseminated to DoD Components that are responsible for developing DoD positions on export license applications.

Followup on Status of Enforcement Actions. DoD did not establish policies and procedures for following up on required enforcement actions. Although DoD required Commerce or State to perform enforcement actions as a condition for approval of some applications, DoD did not have any procedures in place to verify whether Commerce or State performed the enforcement actions, what measures Commerce and State took to perform the enforcement actions, and what the results of the enforcement actions were.

Some countries restricted export enforcement actions. Various countries that receive U.S. exports of militarily sensitive technologies limit the level of export enforcement actions that U.S. personnel may perform. In Saudi Arabia, enforcement of export license conditions on dual-use and munitions items is very limited. According to personnel at the U.S. Embassy in Saudi Arabia, the Saudis are not receptive to oversight measures such as PSVs. State personnel perform PLCs, but they do not perform actual on-site inspections for PSVs in deference to the Saudi culture. In Taiwan, enforcement of export license conditions on dual-use and munitions items was also limited. According to American Institute of Taiwan personnel, enforcement actions on export licenses for munitions items were fulfilled through written correspondence with the parties named in the export license. Only enforcement actions on export licenses for dual-use items were fulfilled through actual site visits.

DTSA was unable to provide any documentation to show that such limitations were considered in the development of a DoD position on an export license application. DTSA should, at a minimum, be able to identify the countries that do not fully support U.S. Defense trade policy goals; the impact that each country's level of support has on enforcement actions; and the risks associated with the level of support. DTSA should have policies and procedures in place that address those issues, including criteria on how DoD Components should incorporate known limitations when developing their positions on export license applications.

Effectiveness of the DoD Export Enforcement Program

DoD does not have a direct role in enforcing export conditions; however, DoD is a key stakeholder in the success of the U.S. export enforcement process. An adequate and effective export enforcement program requires the concerted efforts of several Federal agencies, including DoD. DoD policies and procedures did not require DTSA to verify the accuracy of conditions in approved export licenses, to establish criteria for determining when to require an enforcement action, or to follow up on the results and adequacy of Commerce and State enforcement actions. As a result of the lack of DoD policies and procedures, DoD cannot ensure that critical U.S. military technological advantages are preserved, detrimental transfers are controlled and limited, and proliferation of weapons of mass destruction and their means of delivery is prevented.

Verifying. Because DoD did not establish procedures to verify that Commerce and State accurately incorporated DoD-required conditions into export licenses, DoD cannot ensure that militarily sensitive technologies are not inadvertently released due to misstated or omitted conditions in the approved export license. DoD needs to ensure that the conditions it requires for approval of export license applications are accurately incorporated into the approved export licenses. Misstated or omitted conditions in the approved export license may cause militarily sensitive technologies to be inadvertently released.

Determining Enforcement Actions. Because DoD did not have any policies and procedures in place for determining when an enforcement action should be required, we were unable to assess whether DoD-required enforcement actions were adequate to protect national security objectives. The performance of enforcement actions is critical to the protection of controlled items and to the prevention of illegal technology transfer. Although Commerce and State performed a number of enforcement actions during FY 2000 through FY 2002, DoD did not directly participate in those actions and did not know whether the actions related to DoD conditions for approval of an application. Additionally, Commerce and State did not inform DoD of the results of the enforcement actions. Out of the 22,083 export license applications that were approved with conditions, DoD required an enforcement action as a condition for approval of 565 (2.6 percent⁶). Also, out of the 22,083 export license applications, 3,070 were related to exports to countries of concern. Out of the 3,070 applications, DoD required enforcement actions for 261 (8.5 percent⁶).

Followup. DoD policies and procedures did not require DTSA to follow up on the results of DoD-required enforcement actions. In addition, DoD policies and procedures were not in place to ensure that Commerce and State enforcement actions meet the needs of DoD; therefore, DoD may continue to approve export license applications that it would deny if it had the results of enforcement actions. DoD needs to take a more robust role in the enforcement program to ensure that technology is not inadvertently released to or deliberately obtained by potential adversaries. DoD needs to take a more assertive stance with export enforcement and review the results of DoD-required enforcement actions and assess the adequacy of the enforcement actions.

Commerce and State enforcement programs are subjective as they are dependent on the level of oversight a country permits. If countries are not fully receptive and open to U.S. oversight measures, such as on-site inspections of exported items, DoD must consider such limitations when developing its position on an export license application. For example, DoD could require that the level of technological capabilities be reduced for the exported item or that the exported items contain security control measures that would provide DoD with assurance that even without U.S. personnel performing on-site inspections, a potential adversary could not obtain significant technology from unimpeded study of the exported item. DoD uses such additional assurance measures for cases involving government-to-government arms transfers, and we believe that such measures should be considered for exports to countries that are not fully open and receptive to U.S. export enforcement actions.

Also, DoD should be aware of the specific processes and results of enforcement actions it has required. DoD should review information obtained during an enforcement action and how it was obtained (for example, through phone conversations and written correspondence only) and determine whether that enforcement action's efforts provide assurance that DoD-required conditions were met. Further, as other DoD Components outside of DTSA may be the requestor of an enforcement action, DTSA should disseminate enforcement action information to appropriate DoD Components for review.

Recommendations

A. We recommend that the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation):

1. Establish policies and procedures to verify the inclusion and the accuracy of DoD conditions in approved export licenses.
2. Establish criteria and guidance for the Defense Technology Security Administration and DoD Components for requiring enforcement actions, to include considering risks associated with the adequacy of export enforcement programs when developing DoD conditions.
3. Establish policies and procedures for the Defense Technology Security Administration and DoD Components for obtaining, reviewing, and assessing the adequacy of the results of enforcement actions required by DoD as conditions for approval of an export license application.

Management Comments Required

The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) did not comment on a draft of this report. We request that the Deputy Under Secretary provide comments on the final report.

B. Space Launch Monitoring Program

The DTSA Space Directorate (DTSA-SD) had established and executed an effective monitoring program for activities related to space launches. DTSA-SD was adequately resourced with technology safeguard personnel to accomplish the monitoring mission. Policies and procedures for the execution of the monitoring program were in place and being followed. A comprehensive training program for the monitors had been created and implemented. Monitoring efforts were closely documented and maintained. A reimbursement procedure was in place requiring U.S. companies to reimburse DTSA-SD for all direct and indirect expenses incurred in providing technology monitoring support. As a result, DoD had reasonable assurance that space launch-related technology would not be inadvertently released to or deliberately obtained by potential adversaries.

DTSA-Space Directorate

Public Law 105-261, National Defense Authorization Act for Fiscal Year 1999, section 1514, "National Security Controls on Satellite Export Licensing," October 17, 1998, mandated that a DoD office be responsible for space launch-related exports and expanded the scope of previous DoD monitoring. The scope expansion included:

technical discussions and activities, including the design, development, operation, maintenance, modification, and repair of satellites, satellite components, missiles, other equipment, launch facilities, and launch vehicles; satellite processing and launch activities, including launch preparation, satellite transportation, integration of the satellite with the launch vehicle, testing and checkout prior to launch, satellite launch, and return of equipment to the U.S.; activities related to launch failure, delay or cancellation, including post-launch failure investigations and all other aspects of the launch.

Monitoring Program

DTSA-SD had established and executed an effective monitoring program for space launch-related activities. Draft DoD Directive 5105.kk, "Defense Technology Security Administration," August 2, 2002, assigns the responsibility for management of space-related exports to DTSA. DTSA dedicated a space launch monitoring division to review license applications and develop and implement the technology safeguard programs for space launches of U.S.-made equipment on foreign launch vehicles. DTSA-SD also implements technology safeguards for U.S. launches of U.S.-built satellites of certain foreign ownership. The DTSA space launch monitoring division includes combined engineering and licensing expertise in order to provide cradle-to-grave supervision of space launch programs.

Workforce Resources. DTSA-SD was adequately resourced with technology safeguard personnel to accomplish the monitoring mission. Unlike the dual-use and munitions export programs that rely on various personnel throughout the life cycle of the export (from technical expertise, through license issuance and monitoring), the DTSA-SD cradle-to-grave approach uses the same engineers to review a license application, develop a technology control plan, review the approved license, and supervise and monitor the launches. DTSA developed that approach in response to problems it had previously experienced. The DTSA-SD monitoring effort was accomplished by four monitoring teams of six individuals. Each team comprises a team chief, a deputy team chief, and four interdisciplinary space engineers. As of September 2002, the 4 teams were responsible for 145 projects.

Policies and Procedures. DTSA-SD policies and procedures for execution of the monitoring program were in place and being followed. Operating instructions were complete for the monitoring of foreign launches of U.S. commercial satellites and for the internal procedures for documenting monitoring activities and supporting the monitors in the field. Draft DTSA-SD Operating Instruction SOP-02, "Technology Safeguard Monitoring for Foreign Launches of U.S. Commercial Satellites," requires the documentation of DTSA-SD receipt and review of trip reports from field monitors at technical interchange meetings and launch campaigns. The draft instruction also requires DTSA-SD to manage the provision of qualified, trained, and properly equipped technology safeguard monitors for foreign launches. DTSA-SD arranges monitor training, makes travel preparations, ensures reimbursement of services, and manages resources required for its monitoring role.

Four space launch monitoring project files and additional trip reports, master tracking logs, and technology transfer control plans were reviewed to determine whether the DTSA-SD policies and procedures were being followed. Specifically, individual licenses, technology transfer control plans approved by DTSA-SD, trip reports, reimbursement documents, and the master tracking log of all activity on a project were reviewed. The master tracking log contained detailed records of each team member's activities including export license numbers, documents reviewed, monitor's name, time spent on review, travel dates, and associated costs. Documentation indicated that DTSA-SD personnel had effectively implemented and executed the DTSA-SD policies and procedures.

Training. DTSA-SD established a comprehensive 5-day employee training course, "Space Technology Safeguards Monitoring Course." The course provides training for monitors responsible for the protection against unauthorized transfer of information and technologies during the export of U.S. commercial satellites and related items placed aboard foreign launch vehicles. The course offers instruction in Commerce and State licensing standards and DoD monitoring requirements. The course provides instruction on monitoring the integration of U.S. technologies with foreign launch providers in joint ventures for spacecraft development and manufacturing. All DTSA-SD employees had completed the training.

Monitored Technology Transfer Meetings. DTSA-SD monitored all technology transfer meetings with satellite insurance underwriters. We attended several of those meetings as observers. Technical data provided at the meetings were covered under a license that included DoD conditions. A technical assistance agreement was completed for the transfer of technical information necessary for the insurance community to evaluate the insurance-related risks associated with the satellite and other related products and services. The meetings we attended were carefully monitored and all attendees were known to the monitor. The monitor reviewed the presentation packages prior to the meetings and on one occasion interrupted the briefing to prevent the disclosure of technical information not currently covered with an export license.

Reimbursement of Costs for the DoD Space Launch Monitoring Program. All costs of the DoD Space Launch Monitoring Program were fully reimbursed to DoD by exporters holding licenses issued by Commerce and State that require DoD monitoring. DTSA-SD had reimbursement agreements with more than 60 industry partners, covering such costs as communications, contracted services, equipment, facilities, salaries, training, transportation, and travel.

Conclusion

DTSA-SD had an effective space launch monitoring program and reasonable assurance that space launch-related technology would not be inadvertently released to or deliberately obtained by potential adversaries. Because we did not identify any deficiencies, this report makes no recommendations.

Appendix A. Scope and Methodology

This is one in a series of reports being issued by the Inspector General of the Department of Defense in accordance with the National Defense Authorization Act for Fiscal Year 2000, section 1402, which requires an annual report on the transfer of militarily sensitive technologies to countries and entities of concern.

We reviewed the Export Administration Act and the Arms Export Control Act, which provide direction on export controls. In addition, we reviewed the International Traffic in Arms Regulations to obtain a list of countries that do not cooperate fully with U.S. antiterrorism efforts to identify current countries and entities of concern. Further, we reviewed and evaluated the adequacy of DoD directives, policies, regulations, and memorandums related to end-use monitoring.

We reviewed the established DoD business processes for export licenses as well as Commerce and State enforcement program implementation of DoD conditions to export licenses. Specifically, we conducted interviews with officials from the Offices of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence); the Deputy Under Secretary of Defense (Policy Integration); DTSA; the Defense Criminal Investigative Service, Office of the Inspector General of the Department of Defense; the Defense Reutilization and Marketing Service, Defense Logistics Agency; the Defense Security Cooperation Agency; and the Defense Intelligence Agency. We accompanied a DTSA-SD monitor to several technology transfer meetings in the United Kingdom and France. In addition, we visited the Navy International Programs Office; the Air Force Office of International Affairs; the American Institute of Taiwan; the American Consulate in Hong Kong; and U.S. Embassies in Saudi Arabia, Singapore, and Turkey.

We obtained electronic copies of 22,083 export applications from the TPS for 18 countries—Afghanistan, China, Hong Kong, India, Iran, Iraq, Israel, Italy, Japan, South Korea, Pakistan, the Philippines, Russia, Saudi Arabia, Singapore, Syria, Taiwan, and Turkey. The applications were unclassified and had a DoD release date between FY 2000 and FY 2002. Of those applications, 11,830 were for dual-use items and 10,253 were for munitions items. We electronically queried the 22,083 applications for keywords that would indicate DoD requests for PLCs and PSVs. We evaluated the processes DoD used to verify whether Commerce or State had in fact included all DoD conditions in the approved export license. In addition, we selected 292 dual-use and 4,684 munitions export license applications to determine whether Commerce or State either misstated or omitted the DoD conditions for approval of the export licenses. See Appendix D for further details on the selection process.

To determine whether a DoD-requested enforcement action was performed, we compared the Commerce and State enforcement actions reported for FYs 2000 through 2002 with the export license applications for which DoD had required an enforcement action as a condition for approval.

Our scope was limited because of limitations of data obtained. Commerce could only provide enforcement action data for FYs 2001 and 2002. State was unable to provide us hard copies of export licenses in time for us to consider them in our review. Therefore, we relied on the version in the TPS Munitions database and were unable to determine whether the discrepancies were actual errors in the export licenses or DoD database errors.

We performed this audit from June 2002 through March 2003 in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. To achieve the audit objective, we relied on computer-processed data contained in TPS. Through data mining,¹ we determined that the data were not complete or accurate. Specifically, we identified occurrences such as blank address fields and blank point of contact fields. In addition, we identified USG position fields that contained inaccurate or incomplete information. Although we did not perform a formal reliability assessment of the computer-processed data, we relied on the DoD position field. The DoD position is entered into the system directly by DTSA and it is what DTSA intended to have reflected on the final license. We did not find errors in that field that would preclude the use of computer-processed data to meet the audit objectives or that would change the conclusions in this report.

Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of the Review of the Management Control Program. We reviewed the adequacy of Defense Threat Reduction Agency management controls.² Specifically, we reviewed Defense Threat Reduction Agency management controls over internal accounting and administrative control. We reviewed management's self-evaluation applicable to those controls.

Adequacy of Management Controls. We identified material management control weaknesses for DTSA as defined by DoD Instruction 5010.40. DTSA management controls over export enforcement were not adequate to ensure that export licenses were issued with conditions necessary to ensure the safety of exported militarily sensitive technologies. DoD did not consider the export enforcement limitations of Commerce and State programs when developing DoD conditions on export licenses applications. The recommendations, if

¹ Data mining is a method of research that uses automated tools while searching for information in large databases.

² DTSA was still being formalized during our review and did not have a separate management control program; therefore, DTSA was reported under the Defense Threat Reduction Agency management control program.

implemented, will provide the USG with a more robust export enforcement program. A copy of the report will be provided to the senior official responsible for management controls at DTSA.

Adequacy of Management's Self-Evaluation. DTSA officials did not identify export controls and export license administration as an assessable unit and, therefore, did not identify or report the material management control weaknesses identified by the audit.

Appendix B. Prior Coverage

During the last 5 years, the General Accounting Office and the Inspector General of the Department of Defense (IG DoD) have conducted multiple reviews related to the adequacy of management controls over transfers of sensitive and critical DoD technology with potential military application to foreign nationals. Unrestricted General Accounting Office reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted IG DoD reports can be accessed over the Internet at <http://www.dodig.osd.mil/audit/reports>. The following previous reports are of particular relevance to the subject matter in this report.

General Accounting Office

General Accounting Office Report No. GAO-02-972, "Export Controls: Department of Commerce Controls over Transfers of Technology to Foreign Nationals Need Improvement," September 6, 2002

General Accounting Office Report No. GAO-01-528, "Export Controls: State and Commerce Department License Review Times Are Similar," June 1, 2001

General Accounting Office Report No. GAO/NSIAD-00-208, "Foreign Military Sales: Changes Needed to Correct Weaknesses in End-Use Monitoring Program," August 24, 2000

General Accounting Office Report No. GAO/NSIAD-00-190R, "Defense Trade: Status of the Department of Defense's Initiatives on Defense Cooperation," July 19, 2000

IG DoD

IG DoD Report No. D-2002-039, "Automation of the DoD Export License Application Review Process," January 15, 2002

IG DoD Report No. D-2001-088, "DoD Involvement in the Review and Revision of the Commerce Control List and the U.S. Munitions List," March 23, 2001

IG DoD Report No. D-2001-007, "Foreign National Security Controls at DoD Research Laboratories," October 27, 2000

IG DoD Report No. D-2000-130, "Foreign National Access to Automated Information Systems," May 26, 2000

IG DoD (cont'd)

IG DoD Report No. D-2000-110, "Export Licensing at DoD Research Facilities,"
March 24, 2000

IG DoD Report No. 99-186, "Review of the DoD Export Licensing Processes for
Dual-Use Commodities and Munitions," June 18, 1999

Interagency Reviews

Inspectors General of the Departments of Commerce, Defense, Energy, State, and
the Treasury Report No. D-2002-074, "Interagency Review of Federal Automated
Export Licensing Systems," March 29, 2002

Inspectors General of the Departments of Commerce, Defense, Energy, and State
Report No. D-2001-092, "Interagency Review of the Commerce Control List and
the U.S. Munitions List," March 23, 2001

Inspectors General of the Departments of Commerce, Defense, Energy, and State
Report No. D-2000-109, "Interagency Review of the Export Licensing Process
for Foreign National Visitors," March 24, 2000

Inspectors General of the Departments of Commerce, Defense, Energy, State, and
the Treasury and the Central Intelligence Agency Report No. 99-187,
"Interagency Review of the Export Licensing Processes for Dual-Use
Commodities and Munitions," June 18, 1999

Appendix C. Other Efforts Related to DoD Export Enforcement

DoD has no direct responsibility for enforcing export conditions on dual-use and munitions items. However, programs at the Defense Intelligence Agency, the Defense Criminal Investigative Service, and the Defense Logistics Agency collaborate in different areas to support Commerce and State export enforcement programs.

Defense Intelligence Agency. The Defense Intelligence Agency is a major producer and manager of foreign military intelligence and serves as the military intelligence arm of DoD. The Defense Intelligence Agency assists DTSA with the technical assessment of Commerce and State export cases by assessing the vulnerability of an item if released and providing an opinion. The Defense Intelligence Agency also supports law enforcement when export license laws and conditions are violated.

Defense Criminal Investigative Service. The Defense Criminal Investigative Service serves as the law enforcement arm of the Office of the Inspector General of the Department of Defense. The Defense Criminal Investigative Service investigates allegations of criminal violations and takes an active role in combating the illegal transfer of technologies, weapon systems, components, and programs. In concert with Federal law enforcement agencies and the intelligence community, the Defense Criminal Investigative Service coordinates efforts to thwart the illegal transfer of sensitive U.S. technologies and weapon systems and components, including weapons of mass destruction. The Defense Criminal Investigative Service initiated 81 technology protection cases from FY 2000 through FY 2002. Of those, 41 were investigations and the remainder were undercover operations, information cases, or other projects.

Defense Logistics Agency. The Defense Logistics Agency's Criminal Investigative Activity conducts trade security control clearances on potential buyers of DoD surplus property and foreign excess personal property considered to be dual-use or munitions items and requiring export controls. In addition, after buyers are granted a clearance and awarded the dual-use or munitions item, the Criminal Investigative Activity conducts investigations into the disposition of the property. Those investigations are performed to ensure that trade security controls are being followed and property is not being exported or re-exported to a non-U.S. person or outside of the United States without an approved export license from Commerce or State. During the period of FY 2000 through FY 2002, the Criminal Investigative Activity performed 172 demilitarization code* reviews and 175 post-sale investigations.

* A demilitarization code is assigned to an item after its demilitarization to signify its level of sensitivity.

Appendix D. Sample Selection Process

TPS is an automated system used within DoD to review, coordinate, reach decisions, and maintain records on proposals to release certain items and technology to other nations. Those proposals include export license applications for dual-use and munitions items. DoD recommends approval, denial, or return without action of each license application through TPS. When recommending approval of an application, DoD may include conditions for approval of the export license by entering an official DoD position into TPS. TPS contains several databases; the Commodity Control List database and the Munitions database relate directly to this report.

Commodity Control List Database. The Commodity Control List database contains records of actions taken by DoD regarding the approval of license applications. Each Commodity Control List case is an application submitted by an entity registered with Commerce, in accordance with the Export Administration Regulations, to export dual-use goods and services.

Munitions Database. The Munitions database contains records of actions taken by DoD regarding the approval of license applications. Each Munitions case is an application submitted by an entity registered with State, in accordance with the International Traffic in Arms Regulations, to export arms, ammunitions, implements of war, or technical data on munitions.

Countries Selected for Review. In consultation with Commerce and State, we narrowed our scope by focusing on the following countries that were not countries of concern.

- Hong Kong
- India
- Israel
- Italy
- Japan
- Pakistan
- Philippines
- Russia
- Saudi Arabia
- Singapore
- South Korea
- Taiwan
- Turkey

In addition, we selected the following countries of concern from the Code of Federal Regulations, Section 126.1, "Prohibited exports and sales to certain countries," 2002.

- Afghanistan
- China
- Iran
- Iraq
- Syria

Applications Selected for Review. We asked officials of the Office of the Under Secretary of Defense for Policy, Automation Directorate, to query TPS for applications to export dual-use and munitions items to any of the countries listed in the previous two paragraphs. We further requested that the query be limited to include unclassified applications returned to Commerce or State with DoD conditions for approval from FY 2000 through FY 2002. As a result, we obtained 22,083 license applications: 11,830 applications from the TPS Commodity

Control List database and 10,253 applications from the Munitions database.* The following table shows the number of applications selected per country.

Export License Applications Selected			
<u>Country</u>	<u>Dual-Use</u>	<u>Munitions</u>	<u>Total</u>
Non-Countries of Concern			
Hong Kong	207	89	296
India	1,961	68	2,029
Israel	1,392	1,523	2,915
Italy	214	1,783	1,997
Japan	1,381	2,398	3,779
Pakistan	68	15	83
Philippines	162	178	340
Russia	783	260	1,043
Saudi Arabia	183	444	627
Singapore	645	785	1,430
South Korea	400	1,182	1,582
Taiwan	1,358	723	2,081
Turkey	53	758	811
Subtotal	8,807	10,206	19,013
Countries of Concern			
Afghanistan	0	1	1
China	2,564	41	2,605
Iran	56	5	61
Iraq	0	0	0
Syria	403	0	403
Subtotal	3,023	47	3,070
Total	11,830	10,253	22,083

* Note that TPS does not include all license applications for the named countries, but only those applications that Commerce or State sent to DoD for review.

Appendix E. License Comparison

We obtained electronic copies of 22,083 export license applications from TPS.¹ Of those 22,083 applications, 11,830 were from the Commodity Control List database and 10,253 were from the Munitions database. To determine whether export licenses issued by Commerce or State misstated or omitted DoD-required conditions, we selected 4,976 for review (292 dual-use licenses and 4,684 munitions licenses). Of the 4,976 export licenses, 347 (9 dual-use and 338 munitions) either misstated or omitted DoD-required conditions of approval.

Dual-Use Licenses. Dual-use export applications in the TPS Commodity Control List database rarely included the USG positions. Of the 11,830 applications from the TPS Commodity Control List database, 5,206 applications included information in the USG field, which indicated that a USG condition was included in the approved license. We selected 292 export licenses to determine whether Commerce misstated or omitted conditions required by DoD for approval of the export application. We obtained information from the Commerce Export Control Automated Support System for 292 licenses, as approved by Commerce, and compared the conditions in the licenses with the DoD conditions in TPS. Of the 292 approved export licenses reviewed, 9 (3.1 percent²) either misstated or omitted DoD conditions. Table E-1 shows the number of licenses reviewed and the discrepancies identified.

¹ See Appendix D for further details of our sample selection.

² Judgment sample percentage does not generalize to universe.

<u>Country</u>	<u>Licenses</u>	<u>Missing Conditions</u>	<u>Misstated Conditions</u>	<u>Missing and Misstated Conditions</u>	<u>Total Discrepancies</u>
Non-Countries of Concern					
Hong Kong	9	0	0	0	0
India	39	2	0	0	2
Israel	35	0	1	0	1
Italy	8	0	0	0	0
Japan	37	0	0	0	0
Pakistan	5	0	0	0	0
Philippines	8	0	0	0	0
Russia	15	1	0	1	2
Saudi Arabia	7	0	0	0	0
Singapore	19	1	0	0	1
South Korea	13	0	0	0	0
Taiwan	30	1	0	0	1
Turkey	4	0	0	0	0
Subtotal	229	5	1	1	7
Countries of Concern					
Afghanistan	0	-	-	-	-
China	43	1	1	0	2
Iran	4	0	0	0	0
Iraq	0	-	-	-	-
Syria	16	0	0	0	0
Subtotal	63	1	1	0	2
Total	292	6	2	1	9

Munitions Licenses. Of the 4,684 munitions export licenses selected for review, we limited our review to licenses for items included in 4 categories of the International Traffic in Arms Regulations, which we deemed to be sensitive technology for 9 countries (Hong Kong, Italy, Japan, Philippines, Saudi Arabia, Singapore, South Korea, Taiwan, and Turkey). The four selected categories were:

- 8 (Aircraft [Spacecraft] and Associated Equipment),
- 14 (Toxicological Agents and Equipment and Radiological Equipment),
- 15 (Spacecraft Systems and Associated Equipment), and
- 16 (Nuclear Weapons Design and Test Equipment).

Because the TPS database contained both the DoD conditions and the USG conditions for munitions licenses, we were able to compare the conditions. Of the 4,684 approved export licenses, 338 either misstated or omitted DoD conditions. State was unable to provide us hard copies of export licenses in time for us to consider them in our review. Therefore, we were unable to determine whether the discrepancies in the TPS munitions database were actual errors in the export licenses or DoD database errors. Table E-2 shows the applications reviewed and discrepancies identified using the TPS Munitions database only.

Table E-2. Comparison of DoD and USG Conditions for Munitions Export Applications (FY 2000 through FY 2002)

<u>Country</u>	<u>Licenses</u>	<u>Missing Conditions</u>	<u>Misstated Conditions</u>	<u>Missing and Misstated Conditions</u>	<u>Total Discrepancies</u>
Non-Countries of Concern					
Hong Kong*	33	4	0	0	4
India	38	0	1	0	1
Israel	1,230	34	9	1	44
Italy*	722	31	46	3	80
Japan*	1,144	49	55	2	106
Pakistan	2	0	0	0	0
Philippines*	48	3	0	0	3
Russia	276	10	1	1	12
Saudi Arabia*	125	4	1	0	5
Singapore*	245	9	4	0	13
South Korea*	366	18	23	3	44
Taiwan*	213	9	0	0	9
Turkey*	221	8	4	0	12
Subtotal	4,663	179	144	10	333
Countries of Concern					
Afghanistan	0	-	-	-	-
China	18	3	1	0	4
Iran	3	0	1	0	1
Iraq	0	-	-	-	-
Syria	0	-	-	-	-
Subtotal	21	3	2	0	5
Total	4,684	182	146	10	338

* Review limited to applications for export of items with International Traffic in Arms Regulations codes 8, 14, 15, and 16.

Appendix F. Enforcement Actions Required by DoD

We obtained electronic copies of 22,083 export license applications from TPS for dual-use and munitions export applications for FY 2000 through FY 2002. Of those 22,083 applications, 11,830 were from the TPS Commodity Control List database and 10,253 were from the TPS Munitions database. Appendix D provides details on the sample selection process. To determine the number of enforcement actions DoD had required as a condition for approval of export license applications, we queried the 22,083 license applications within TPS for keywords that would indicate DoD had required a PLC or PSV. Of the 22,083 export license applications queried, 565 (556 dual-use licenses and 9 munitions licenses) included enforcement actions as a DoD condition for approval. Then we evaluated the process DoD used to verify whether Commerce or State had performed the enforcement actions. We requested documentation from Commerce and State on the enforcement actions they performed. We compared the Commerce and State documentation with the results of our queries. Of the 574 DoD-required enforcement actions, DoD required 2 enforcement actions each for 9 dual-use applications. We verified the performance of 84 enforcement actions; we could not verify the performance of 490 enforcement actions (484 on dual-use and 6 on munitions license applications).

Dual-Use Applications. Of the 11,830 dual-use export license applications DoD received from FY 2000 through FY 2002, DoD required enforcement actions as a condition of approval for 556. Of the 556 export license applications, DoD required 194 PLCs and 371 PSVs. DoD required both PLC and PSV for nine of the applications. Table F-1 shows enforcement actions required by DoD as a condition for approval of an export license application for dual-use items, by country.

**Table F-1. DoD-Required Enforcement Actions for
Dual-Use Export License Applications
(FY 2000 through FY 2002)**

<u>Country</u>	<u>Applications</u>	<u>Applications for which DoD required Enforcement Actions</u>	<u>PLC Required</u>	<u>PSV Required</u>	<u>DoD Required Enforcement Actions</u>
Non-Countries of Concern					
Hong Kong	207	6	1	5	6
India	1,961	26	7	20	27*
Israel	1,392	88	77	11	88
Italy	214	1	1	0	1
Japan	1,381	11	3	8	11
Pakistan	68	2	1	1	2
Philippines	162	5	1	4	5
Russia	783	67	29	39	68*
Saudi Arabia	183	4	2	2	4
Singapore	645	18	6	12	18
South Korea	400	3	0	3	3
Taiwan	1,358	61	29	32	61
Turkey	53	3	0	3	3
Subtotal	8,807	295	157	140	297
Countries of Concern					
Afghanistan	0	-	-	-	-
China	2,564	101	26	75	101
Iran	56	0	0	0	0
Iraq	0	-	-	-	-
Syria	403	160	11	156	167*
Subtotal	3,023	261	37	231	268
Total	11,830	556	194	371	565

* The number of actions do not equal the number of export license applications because DoD required that both a PLC and PSV be performed for some license applications.

Of the 565 enforcement actions required by DoD, we verified that Commerce performed 81 (14.3 percent). We were unable to determine whether the remaining 484 actions had been performed. Table F-2 shows the number of DoD-required enforcement actions that Commerce performed.

Country	Enforcement Actions Required	Enforcement Actions Performed	Percent
Non-Countries of Concern			
Hong Kong	6	5	83.3
India	27	1	3.7
Israel	88	32	36.4
Italy	1	0	0.0
Japan	11	1	9.1
Pakistan	2	0	0.0
Philippines	5	0	0.0
Russia	68	12	17.6
Saudi Arabia	4	1	25.0
Singapore	18	2	11.1
South Korea	3	0	0.0
Taiwan	61	14	23.0
Turkey	3	2	66.7
Subtotal	297	70	23.6
Countries of Concern			
Afghanistan	-	-	-
China	101	4	4.0
Iran	0	-	-
Iraq	-	-	-
Syria	167	7	4.2
Subtotal	268	11	4.1
Total	565	81	14.3

Munitions Applications. Of the 10,253 munitions export license applications DoD received from FY 2000 through FY 2002, one contained a DoD requirement for a PLC and eight contained DoD requirements for PSVs. Table F-3 shows the number of enforcement actions required by DoD as a condition for approval of an export license application for munitions items, by country.

**Table F-3. DoD-Required Enforcement Actions
for Munitions Export License Applications
(FY 2000 through FY 2002)**

Country	Applications	Applications for which DoD Required Enforcement Actions	PLC Required	PSV Required	DoD Required Enforcement Actions
Non-Countries of Concern					
Hong Kong	89	4	1	3	4
India	68	0	0	0	0
Israel	1,523	3	0	3	3
Italy	1,783	1	0	1	1
Japan	2,398	0	0	0	0
Pakistan	15	0	0	0	0
Philippines	178	0	0	0	0
Russia	260	0	0	0	0
Saudi Arabia	444	0	0	0	0
Singapore	785	0	0	0	0
South Korea	1,182	0	0	0	0
Taiwan	723	1	0	1	1
Turkey	758	0	0	0	0
Subtotal	10,206	9	1	8	9
Countries of Concern					
Afghanistan	1	0	0	0	0
China	41	0	0	0	0
Iran	5	0	0	0	0
Iraq	0	-	-	-	-
Syria	0	-	-	-	-
Subtotal	47	0	0	0	0
Total	10,253	9	1	8	9

Of the nine enforcement actions required by DoD, we verified that State performed three (33.3 percent). We were unable to determine whether the remaining six enforcement actions had been performed. Table F-4 shows the number of DoD-required enforcement actions that State performed.

<u>Country</u>	<u>Enforcement Actions Required</u>	<u>Enforcement Actions Performed</u>	<u>Percent</u>
Non-Countries of Concern			
Hong Kong	4	1	25.0
India	0	-	-
Israel	3	1	33.3
Italy	1	1	100.0
Japan	0	-	-
Pakistan	0	-	-
Philippines	0	-	-
Russia	0	-	-
Saudi Arabia	0	-	-
Singapore	0	-	-
South Korea	0	-	-
Taiwan	1	0	0
Turkey	0	-	-
Subtotal	9	3	33.3
Countries of Concern			
Afghanistan	0	-	-
China	0	-	-
Iran	0	-	-
Iraq	-	-	-
Syria	-	-	-
Subtotal	0	-	-
Total	9	3	33.3

Appendix G. Report Distribution

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